
TITLE 326 AIR POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD

LSA Document #07-286

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING PERMIT FEES**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to [326 IAC 2](#) concerning permit fees and related permit requirements. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: [326 IAC 2-1.1-7](#); [326 IAC 2-7](#); [326 IAC 2-8](#); [326 IAC 2-9](#); [326 IAC 2-12](#); [326 IAC 2-13](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-15](#); [IC 13-16](#); [IC 13-17-3-10](#); [IC 13-17-8](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**Basic Purpose and Background****Title V Permit Program Fees**

Title V of the Clean Air Act (CAA) requires that state air permitting programs be supported by fees sufficient to cover all reasonable direct and indirect costs required to develop and administer the air permit program in accordance with federal requirements. IDEM implemented Indiana's general air permit program fees in [326 IAC 2-1.1-7](#), fees for the Part 70 permit program in [326 IAC 2-7](#), fees for federally enforceable state operating permits (FESOPs) in [326 IAC 2-8](#), source specific operating agreement (SSOA) program fees in [326 IAC 2-9](#), fees for general permits in [326 IAC 2-12](#), and fees for interim approvals in [326 IAC 2-13](#). These air permit program fees currently in state rules have not been increased in over 10 years.

In accordance with [IC 13-17-8-7](#), the Air Pollution Control Board (APCB) is authorized to revise Title V permit program fees based on the Consumer Price Index (CPI), or as necessary to provide adequate revenue to fund all activities related to the Title V permit program. On September 27, 2006, IDEM released a report on the Title V Permit Trust Fund and the need for additional resources to support the program. The report was presented to the APCB on October 19, 2006, at which time IDEM explained it would be requesting a 25% increase in fees for the Title V permit program to cover the costs of administering the program at a future board meeting. The Title V Permit Trust Fund includes all fees collected from Part 70, FESOP, and SSOA sources.

Over the past several years, annual revenues have decreased while expenses have increased. Historically, Title V permit program revenues have decreased approximately two percent every year. The recent redesignation of Lake and Porter counties from severe to moderate ozone nonattainment is an important accomplishment, but it will result in decreased Title V permit program revenues for the agency because the fee cap will be lower. Expenses related to staff have increased, in part due to salary differentials for engineers and general employee raises. Operational expenses such as the cost of vehicles, copier supplies, and expenditures on contracts to enhance databases for permitting and compliance have also increased. If Title V permit program fees are not increased, IDEM anticipates the Title V Permit Trust Fund will be depleted by Fiscal Year 2009.

At the December 6, 2006, APCB meeting, IDEM requested a 25% increase in fees for the Title V permit program. A majority of the board voted to affirm the requested 25% increase in fees, and it became effective on January 1, 2007. The fee increase will be used to cover increases in staff and operational expenses and to cover the gap left by decreases in permit revenues. In addition, the increased fees will assist IDEM to issue pending permit renewals and to expedite major economic development permits.

Non-Title V Permit Program Fees

In addition to the increases affirmed by the APCB, IDEM is proposing to increase all other fees by 25% via this rulemaking. IDEM is seeking to increase these fees to cover the increased expenses related to staff, equipment, and supplies. These fees include the non-Title V permit program fees currently in [326 IAC 2-1.1-7](#), the General Permit fees currently in [326 IAC 2-12](#), and the Interim Approval fees currently in [326 IAC 2-13](#).

Transitions and Transition Fees

IDEM is proposing several changes affecting transitions from one type of permit to another and the fees associated with these transitions. Currently, IDEM charges fees for transitions from a Part 70 permit to a FESOP and from a Part 70 permit or FESOP to a SSOA. The fee for the transition from a Part 70 permit to a FESOP was increased on January 1, 2007, to \$1,250 based on the approved increase in fees related to the Title V program. The previous fee amount is listed in [326 IAC 2-7-22\(b\)\(3\)](#). In addition to moving this fee to [326 IAC 2-1.1-7](#) and updating it to reflect the new amount, IDEM proposes to add the fees for the transition from the Part 70 permit or FESOP to a SSOA. These fees are \$625 as approved by the APCB.

IDEM is proposing to allow a transition from a Part 70 permit to a minor state operating permit (MSOP) with a fee equivalent to the new application fee for MSOPs. IDEM proposes a fee of \$125, which is consistent with the

MSOP application fee proposed in this rule.

IDEM is also proposing to allow a transition from a MSOP to a SSOA with a fee equivalent to the SSOA fee that became effective on January 1, 2007. MSOP sources that agree to operate under a SSOA would have less burdensome permitting requirements and the resources for processing the permit by IDEM would also be reduced. In accordance with the new fees that became effective on January 1, 2007, the fees proposed for this type of transition would be \$750 for a coal mine, \$1,000 for a crushed stone facility, or \$625 for any other SSOA.

Other Fee-Related Changes

IDEM is considering making other changes to the fees and fee-related permitting activities for clarity and consistency. IDEM is considering the following revisions:

- Consolidate all fee information in [326 IAC 2-1.1-7](#).
- Arrange fees in a table format with clear identification of application fees and annual fees.
- Clarify that fees for interim approvals must be submitted with the application, but that all other fees will be billed by IDEM.
- Combine application and filing fees when both are applicable into one fee amount.
- Clarify specific fees that are based on the "filing fee" in [326 IAC 2-1.1-7\(1\)](#) and delete the reference to a separate "filing fee".
- Delete obsolete language in [326 IAC 2-7-19\(a\)](#).
- Revise the Consumer Price Index (CPI) language currently in [326 IAC 2-7-19\(f\)](#) and [326 IAC 2-8-16\(c\)](#) to add the option of submitting a fee adequacy demonstration to U.S. EPA in lieu of increasing fees. Clarify that the CPI may be raised in each year by the CPI for the most recent calendar year ending before the beginning of the year in which the increase is to be made.
- Add that fees increased by the CPI shall be published in the Indiana Register at least 30 days prior to the increase taking effect.
- Clarify that the Title V Permit Trust Fund includes all fees received from Part 70, FESOP, and SSOA sources.

IDEM is seeking comments on making the fee information in the Title V permit program rules consistent with the APCB action that increased permit fees by 25%, and on increasing all other fees by 25%, to cover the increased costs of operating the non-Title V permit programs. In addition, IDEM seeks comments on the format for the fee information. IDEM is considering consolidating the fee information in one part of the permit rules and arranging it in a table format. Upon completion, this rule will be submitted to U.S. EPA for approval into the state implementation plan.

Alternatives To Be Considered Within the Rulemaking

Alternative 1. Revise Title V permit program fees to reflect the 25% increase affirmed by the APCB.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is not specifically imposed by federal law, however, federal law under Title V of the Clean Air Act requires that Indiana charge air permit program fees sufficient to cover the direct and indirect costs of administering the program.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Alternative 2. Increase non-Title V permit program fees by 25%.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 3. Add existing transition fees to the permitting rules and add new transition options and fees.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 4. Make "other fee-related changes" identified in the Background Section of this notice.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 5. Do not increase non-Title V permit program fees by 25%.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

Section 502(b)(3)(A) of the Clean Air Act (CAA) requires that state Title V air permitting programs be supported by fees sufficient to cover all reasonable direct and indirect costs required to develop and administer the air permit program in accordance with federal requirements.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. The increase in Title V permit program fees of 25% went into effect on January 1, 2007. This rule will not have any additional impact, but will provide consistency between the rule and the action of the APCB in approving the fee increase.

Potential Fiscal Impact of Alternative 2. Based on non-Title V permit program fees collected in 2006, it is estimated that the fiscal impact of this alternative to regulated entities will be approximately \$47,650.

Potential Fiscal Impact of Alternative 3. The impact of the proposed changes regarding transitions would be as follows:

- Add transition fees for changing from a Part 70 permit or FESOP to a SSOA equivalent to the new SSOA application fee. This change would impact a source with a Part 70 permit or FESOP that requests to be regulated under a SSOA. In accordance with the new fees that became effective on January 1, 2007, the impact would be \$750 for a coal mine, \$1,000 for a crushed stone facility, or \$625 for any other SSOA.
- Add a transition from an MSOP to a SSOA with a fee equivalent to the new SSOA fee. This change would impact a source with a MSOP that requests to be regulated under a SSOA. In accordance with the new fees that became effective on January 1, 2007, the impact would be \$750 for a coal mine, \$1,000 for a crushed stone facility, or \$625 for any other SSOA.
- Add a transition from a Part 70 permit to an MSOP with a fee equivalent to the new application fee for MSOPs. This change would impact a source with a Part 70 permit that requests to be regulated under a MSOP. The impact would be \$125 under the fees proposed to be increased in this rule.

Potential Fiscal Impact of Alternative 4. None of the revisions proposed in the Background Section for "Other Fee-Related Changes" will have a fiscal impact.

Potential Fiscal Impact of Alternative 5. No fiscal impact.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a Small Business Assistance Program Ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

www.in.gov/idem/compliance/ctap/index.html

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf
IDEM Compliance and Technical Assistance Program
OPPTA - MC60-04
100 N. Senate Avenue
W-041
Indianapolis, IN 46204-2251
(317) 232-8578
selyusuf@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Megan Tretter
IDEM Small Business Assistance Program Ombudsman
MC 50-01--IGCN 1307
100 N. Senate Ave.
Indianapolis, IN 46204-2251
(317) 234-3386
mtretter@idem.in.gov

Public Participation and Workgroup Information

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Christine Pedersen, Rules Development Section, Office of Air Quality at (317) 233-6868 or (800) 451-6027 (in Indiana).

STATUTORY AND REGULATORY REQUIREMENTS

[IC 13-14-8-4](#) requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.

- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#07-286(APCB) Permit Fees
Christine Pedersen Mail Code 61-50
c/o Administrative Assistant
Rules Development Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the tenth floor reception desk, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by June 29, 2007.

Additional information regarding this action may be obtained from Christine Pedersen, Rules Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).

Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality

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